courts may theorize on matters of waiver and negligence in the conduct of causes in court, but that the jury may render a just verdict on the issues presented by the pleadings and evidence. Yet that consideration seems to be overlooked too often. Nor is it extreme to say that by submitting evidence to sustain his side of the issues raised by the pleadings an attorney is impliedly requesting the court to submit the correct law on the issues thus presented. Of course, if a court has failed to instruct, or has instructed voluntarily but erroneously, and a verdict consistent with the law and evidence is obtained, a reversal should not be granted for that reason. *Ford* v. *Lacey,* 30 L. J. Ex. 351. Where a trial court has made a reasonable effort to present the law bearing on the issues, and a slight error has been committed, the cases are all in accord that, unless a party has made a request which would, if granted, have obviated such error, he is in no position to complain. This question may arise where some minor phase of the evidence has been overlooked by the judge or where unintentionally some phase of the adversary's case has been given undue prominence. *N. P. R. R. Co.* v. *Mares,* 123 U. S. 710; *U. S.* v. *Goodloe,* 204 Ala. 484; *Livingstone* v. *Dole,* 184 Ia. 1340; *Mahiat* v. *Codde,* 106 Mich. 387. There is good reason for this, as pointed out in 2 THOMPSON, TRIALS (Ed. 2), Sec. 2341: "* * * A party cannot, by merely excepting to a charge, make it the foundation for an assignment of error that it is indefinite or incomplete. The facts of the case come to the mind of the judge as matters of first impression, and it will often be extremely difficult for him in the short time allowed for a trial before a jury, and in the midst of such a trial, to prepare a series of instructions applicable to all the hypotheses presented by the evidence. * * *"

TRIAL PRACTICE—PLAINTIFF'S RIGHT TO DISMISS.—In a suit in equity, after a hearing had been had before the chancellor, and he had found that complainant had no grounds for equitable relief, complainant sought to dismiss, and was refused. The defendant insisted that final judgment be rendered. This course was adopted below. On appeal, questioning the refusal to allow complainant to withdraw, *held,* a litigant has no absolute right to discontinue an action without the sanction of the court, either at law or in equity. *Beaver* v. *Slane* (Pa., 1921), 114 Atl. 509.

It is often said that a plaintiff has an absolute right to dismiss his action before a certain stage in the trial has been reached. After verdict, the rule, almost without exception, is that a voluntary dismissal cannot be had. See cases, 18 C. J. 1153. There is a contrariety of opinion as to when that stage has been reached before verdict. At common law, originally, suit could be dismissed as a matter of right at least before verdict rendered. *Hamlin* v. *Walker,* 228 Mo. 611. This rule apparently survives. *Oil Co.* v. *Shore,* 171 N. C. 51; *Deneen* v. *Houghton County St. Ry. Co.,* 150 Mich. 235; *U. S.* v. *N. & W. Ry. Co.,* 118 Fed. 554. Until the jury retires the plaintiff has an absolute right of dismissal. *Burke* v. *Chicago City Ry. Co.,* 109 Ill. App. 656. The right is absolute before a trial on the merits is begun. *New Hampshire Banking Co.* v. *Ball,* 57 Kan. 812; *Heineman* v. *Van Stone,* 68 N. Y. S. 803; *McQuesten* v. *Commonwealth,* 198 Mass. 172. After such arbitrarily

fixed point in the progress of the case has been reached, it is still possible for the court in its discretion to allow the plaintiff to withdraw. *Ashmead* v. *Ashmead,* 23 Kan. 262; *McQuesten* v. *Commonwealth, supra; Bee Building Co.* v. *Dalton,* 68 Neb. 38. Other cases seem to ignore the line of distinction between absolute right and discretionary right, here suggested, and would make it in all cases a matter of discretion with the trial court. *In Matter Waverly Water Works,* 85 N. Y. 478; *Island Realty Co.* v. *U. S.,* 209 Fed. 201. But if the defendant is not prejudiced there is no need for discretion and the plaintiff may voluntarily dismiss. *Andrews* v. *French,* 17 N. M. 615. It is often said that a plaintiff has an absolute right to dismiss his action where there exists no special reason why the dismissal should not be granted. *Deere & Webber Co.* v. *Hinckley,* 20 S. D. 359. This and the discretion rule are too general, as it too frequently requires the final word of an appellate court to determine whether the discretion has been properly exercised, or whether or not special reasons exist. See *Lane* v. *Morton,* 81 N. C. 38; *Stevens* v. *The Railroads,* 4 Fed. 97; *Palmer* v. *D., L. & W. R. R.,* 222 Fed. 461; *Palmedo* v. *Walton Reporter Co.,* 183 N. Y. S. 365. The use of conditional orders of dismissal in such cases is common. *American Steel and Wire Co.* v. *Mayer & Englund Co.,* 123 Fed. 204. The principal case holds that a final decision on the merits had been reached, which precluded dismissal as of right, and that ordinarily, when all the evidence has been submitted, a dismissal will not be allowed. On the latter point, compare *Levy* v. *Insurance Co.,* 159 N. Y. S. 902, which ruled to the contrary on the same state of facts.

TRUSTS—IS THE CESTUI'S RIGHT IN REM OR IN PERSONAM?—The Vermont tax appraisers levied a tax upon the cestui's interest in a trust estate consisting of certain securities. The cestui was a resident of Vermont and the trustee was a non-resident. The levy was protested on the ground that the cestui had no property within the state subject to taxation. *Held,* the equitable interest of the cestui is property which the legislature may subject to taxation. *City of St. Albans* v. *Avery* (Vt., 1921), 114 Atl. 31.

The liability of a resident cestui to property taxation on the theory that he has a property interest within the state, even though the trustee is a non-resident, is apparently fairly well settled. In *Hunt* v. *Perry,* 165 Mass. 287, the court sustained a law imposing a personal property tax upon him. In *Maguire* v. *Tax Commissioner,* 230 Mass. 503, affirmed in 253 U. S. 12, he was subjected to a state income tax upon income derived from property held in trust by a non-resident trustee. These decisions are predicated on the theory that the cestui has a property interest in the trust estate in addition to the usual personal rights against the trustee. The interesting feature of the decision in the principal case is the unequivocal language with which the Vermont court repudiates the historic doctrine that the cestui's interest is merely *in personam.* It says: "The beneficiaries are the substantial owners of the trust fund. They have the power to control absolutely the character of the securities comprising the fund and to terminate it at will. They actually owned the securities yesterday, so to speak, and may tomorrow if they so elect. * * * To say that, possessed of the interests and rights which